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08 JUN 16 PM 2:58

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andrew J. Ogilvie (SBN 57932)
Kemnitzer, Anderson, Barron, Ogilvie & Brewer, LLP
445 Bush Street, 6th Floor
San Francisco, CA 94108
Ph: (415) 861-2265
Fax: (415) 861-3151
ajogil@kabolaw.com

Attorneys for Plaintiff Emelia M. Pasternak

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MHP

EMELIA M PASTERNAK,

Plaintiff,

v.

TRANS UNION LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION SERVICES LLC,
and CAPITAL ONE BANK, a national
association,

Defendants.

Case No.

08

2972

COMPLAINT

(Fair Credit Reporting Act)

DEMAND FOR JURY TRIAL

1. The court has jurisdiction under 15 USC § 1681p.
2. Plaintiff Emelia M. Pasternak ("plaintiff") is a consumer as defined by the Fair Credit Reporting Act, 15 USC § 1681a(c).
3. Defendant Trans Union LLC ("Trans Union") is a "consumer reporting agency" as defined by the FCRA, 15 USC § 1681a(f).

1 4. Defendant Experian Information Solutions, Inc. ("Experian") is a
2 "consumer reporting agency" as defined by the FCRA, 15 USC § 1681a(f).

3 5. Defendant Equifax Information Services LLC ("Equifax") is a "consumer
4 reporting agency" as defined by the FCRA, 15 USC § 1681a(f).

5 6. Defendant Capital One Bank ("Capital One") is a national banking
6 association.

7 7. In July 2003, a person pretending to be plaintiff submitted a credit
8 application to Capital One using an invalid address that had previously belonged to
9 plaintiff on Gayley Avenue in Los Angeles, California. Capital One requested and
10 obtained plaintiff's credit reports and opened an account in response to the application.
11 No later than September 29, 2003, Capital One learned that the application was fraudulent
12 and had not been submitted by plaintiff.

13 8. In late September or early October 2004, Capital One received another
14 application for credit by a person pretending to be plaintiff which again used the invalid
15 address on Gayley Avenue in Los Angeles, California, which had been used on the July
16 2003 application that Capital One had determined was fraudulent. Capital One requested
17 credit reports on plaintiff from Experian, Equifax and Trans Union and received plaintiff's
18 credit reports from those agencies. Capital One then opened an account in response to the
19 credit application. Charges were made on the account that were not paid and eventually
20 the unpaid balance was charged off. The fraudulent account information, including the
21 charge off, was reported on plaintiff's credit reports by Experian, Equifax and Trans
22 Union.

23 9. Plaintiff did not discover that the application submitted to Capital One in
24 2004 had the same invalid address as the application submitted to Capital One in 2003
25 until after she obtained the 2003 application in May 2008.

26 10. During the past two years, Equifax prepared consumer credit reports
27 concerning plaintiff that include inaccurate information. Plaintiff notified Equifax that she

1 disputed the accuracy of the information it was reporting. Plaintiff notified Equifax that
2 she was a victim of identity theft. Plaintiff sent an identity theft report to Equifax.
3 Equifax continued to report inaccurate information on plaintiff after receiving her
4 disputes, notice she was a victim of identity theft, and her identity theft report.

5 11. During the past two years, Experian prepared consumer credit reports
6 concerning plaintiff that include inaccurate information. Plaintiff notified Experian that
7 she disputed the accuracy of the information it was reporting. Plaintiff notified Experian
8 that she was a victim of identity theft. Plaintiff sent an identity theft report to Experian.
9 Experian continued to report inaccurate information on plaintiff after receiving her
10 disputes, notice she was a victim of identity theft, and her identity theft report.

11 12. During the past two years, Trans Union prepared consumer credit reports
12 concerning plaintiff that include inaccurate information. Plaintiff notified Trans Union
13 that she disputed the accuracy of the information it was reporting. Plaintiff notified Trans
14 Union that she was a victim of identity theft. Plaintiff sent an identity theft report to Trans
15 Union. Trans Union continued to report inaccurate information on plaintiff after receiving
16 her disputes, notice she was a victim of identity theft, and her identity theft report.

17 13. In August 2007, Equifax deleted the 2004 Capital One account after
18 receiving plaintiff's dispute and a police report identifying the account as fraudulent.
19 Equifax did not subsequently report plaintiff as having any accounts with Capital One.

20 14. In March 2008, Capital One contacted Equifax and requested a consumer
21 report on plaintiff for purposes of an account review. In response to the request, Equifax
22 provided Capital One with a consumer report on plaintiff.

23 15. In December 2006, plaintiff requested her credit report from Equifax.
24 Equifax received plaintiff's request but did not provide plaintiff with a credit report. On
25 other occasions since January 2007 Equifax provided plaintiff with a credit report that did
26 not include all of the information in her file and did not include identification of all
27 persons who received a consumer report, or made an inquiry, regarding plaintiff.

16. In December 2006, plaintiff requested her credit report from Trans Union. Trans Union received plaintiff's request but did not provide plaintiff with a credit report.

17. On June 8, 2007, Equifax sent plaintiff a letter stating it had added an extended fraud alert to her credit file and that it had removed her name from promotional offers of credit for five years. Equifax provided plaintiff with her credit report dated August 10, 2007 which indicated that her name and address had been given to USAA FSB CC on June 10, 2007 for promotional offers.

FIRST CLAIM FOR RELIEF

(Against Equifax)

(Negligent Noncompliance with the FCRA)

18. Plaintiff incorporates by reference paragraphs 1 through 17.

19. Equifax negligently failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to follow reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 1681b of the FCRA, as required by 15 USC § 1681e(a);
- b. Failing to comply with the requirements of 15 USC § 1681b;
- c. Failing to follow reasonable procedures to assure maximum possible accuracy of the information in reports concerning plaintiff, as required by 15 USC § 1681e(b);
- d. Failing to comply with the requirements of 15 USC § 1681g; and

20. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic loss, lost opportunity to receive credit, damage to reputation, invasion of privacy, interference with her normal and usual activities, emotional distress, anger, frustration, humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks damages in an amount to be determined by the jury.

21. Plaintiff requests attorney fees pursuant to 15 USC § 1681o(a).

SECOND CLAIM FOR RELIEF

(Against Equifax)

(Willful Noncompliance with the FCRA)

22. Plaintiff incorporates by reference paragraphs 1 through 17.

23. Equifax willfully failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to follow reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 1681b of the FCRA, as required by 15 USC § 1681e(a);
- b. Failing to comply with the requirements of 15 USC § 1681b;
- c. Failing to follow reasonable procedures to assure maximum possible accuracy of the information in reports concerning plaintiff, as required by 15 USC § 1681e(b);
- d. Failing to comply with the requirements of 15 USC § 1681g; and

24. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic loss, lost opportunity to receive credit, damage to reputation, invasion of privacy, interference with her normal and usual activities, emotional distress, anger, frustration, humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks damages in an amount to be determined by the jury. Plaintiff also seeks punitive damages in an amount to be determined by the jury.

25. Plaintiff requests attorney fees pursuant to 15 USC § 1681n(a).

THIRD CLAIM FOR RELIEF

(Against Trans Union)

(Negligent Noncompliance with the FCRA)

26. Plaintiff incorporates by reference paragraphs 1 through 17.

27. Trans Union negligently failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to follow reasonable procedures to assure maximum possible accuracy of the information in reports concerning plaintiff, as required by 15 USC § 1681e(b);
- b. Failing to comply with the requirements of 15 USC § 1681c-2; and
- c. Failing to comply with the requirements of 15 USC § 1681g.

28. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic loss, lost opportunity to receive credit, damage to reputation, invasion of privacy, interference with her normal and usual activities, emotional distress, anger, frustration, humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks damages in an amount to be determined by the jury.

29. Plaintiff requests attorney fees pursuant to 15 USC § 1681o(a).

FOURTH CLAIM FOR RELIEF

(Against Trans Union)

(Willful Noncompliance with the FCRA)

30. Plaintiff incorporates by reference paragraphs 1 through 17.

31. Trans Union willfully failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to follow reasonable procedures to assure maximum possible accuracy of the information in reports concerning plaintiff, as required by 15 USC § 1681e(b);
- b. Failing to comply with the requirements of 15 USC § 1681c-2; and
- c. Failing to comply with the requirements of 15 USC § 1681g.

32. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic

1 loss, lost opportunity to receive credit, damage to reputation, invasion of privacy,
2 interference with her normal and usual activities, emotional distress, anger, frustration,
3 humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks
4 damages in an amount to be determined by the jury. Plaintiff also seeks punitive damages
5 in an amount to be determined by the jury.

6 33. Plaintiff requests attorney fees pursuant to 15 USC § 1681n(a).

7 **FIFTH CLAIM FOR RELIEF**

8 (Against Experian)

9 (Negligent Noncompliance with the FCRA)

10 34. Plaintiff incorporates by reference paragraphs 1 through 17.

11 35. Experian negligently failed to comply with the requirements of the FCRA
12 including but not limited to:

13 a. Failing to follow reasonable procedures to assure maximum possible
14 accuracy of the information in reports concerning plaintiff, as required
15 by 15 USC § 1681e(b); and

16 b. Failing to comply with the requirements of 15 USC § 1681g.

17 36. As a result of defendant's failure to comply with the requirements of the
18 FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic
19 loss, lost opportunity to receive credit, damage to reputation, invasion of privacy,
20 interference with her normal and usual activities, emotional distress, anger, frustration,
21 humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks
22 damages in an amount to be determined by the jury.

23 37. Plaintiff requests attorney fees pursuant to 15 USC § 1681o(a).

24 **SIXTH CLAIM FOR RELIEF**

25 (Against Experian)

26 (Willful Noncompliance of the FCRA)

27 38. Plaintiff incorporates by reference paragraphs 1 through 17.

39. Experian willfully failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to follow reasonable procedures to assure maximum possible accuracy of the information in reports concerning plaintiff, as required by 15 USC § 1681e(b); and
- b. Failing to comply with the requirements of 15 USC § 1681g.

40. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic loss, lost opportunity to receive credit, damage to reputation, invasion of privacy, interference with her normal and usual activities, emotional distress, anger, frustration, humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks damages in an amount to be determined by the jury. Plaintiff also seeks punitive damages in an amount to be determined by the jury.

41. Plaintiff requests attorney fees pursuant to 15 USC § 1681n(a).

SEVENTH CLAIM FOR RELIEF

(Against Capital One)

(Negligent Noncompliance with the FCRA)

42. Plaintiff incorporates by reference paragraphs 1 through 17.

43. Capital One negligently failed to comply with the requirements of the FCRA including but not limited to:

- a. Failing to comply with the requirements of 15 USC § 1681b; and
- b. Obtaining information from a consumer reporting agency under false pretenses, in violation of 15 USC § 1681q.

44. As a result of defendant's failure to comply with the requirements of the FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic loss, lost opportunity to receive credit, damage to reputation, invasion of privacy, interference with her normal and usual activities, emotional distress, anger, frustration,

1 humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks
2 damages in an amount to be determined by the jury.

3 45. Plaintiff requests attorney fees pursuant to 15 USC § 1681o(a).

4 **EIGHTH CLAIM FOR RELIEF**

5 (Against Capital One)

6 (Willful Noncompliance with the FCRA)

7 46. Plaintiff incorporates by reference paragraphs 1 through 17.

8 47. Capital One willfully failed to comply with the requirements of the FCRA
9 including but not limited to:

10 a. Failing to comply with the requirements of 15 USC § 1681b; and

11 b. Obtaining information from a consumer reporting agency under false
12 pretenses, in violation of 15 USC § 1681q.

13 48. As a result of defendant's failure to comply with the requirements of the
14 FCRA, plaintiff has suffered, and continues to suffer, actual damages, including economic
15 loss, lost opportunity to receive credit, damage to reputation, invasion of privacy,
16 interference with her normal and usual activities, emotional distress, anger, frustration,
17 humiliation, anxiety, fear, worry and related health problems, for which plaintiff seeks
18 damages in an amount to be determined by the jury. Plaintiff also seeks punitive damages
19 in an amount to be determined by the jury.

20 49. Plaintiff requests attorney fees pursuant to 15 USC § 1681n(a).

21 **PRAYER**

22 WHEREFORE, plaintiff prays for judgment against each defendant as follows:

23 On the First Claim for Relief:

24 1. Actual damages to be determined by the jury; and

25 2. Attorney fees.

26 On the Second Claim for Relief:

27 1. Actual damages to be determined by the jury;

2. Punitive damages to be determined by the jury; and

3. Attorney fees.

On the Third Claim for Relief:

1. Actual damages to be determined by the jury; and

2. Attorney fees.

On the Fourth Claim for Relief:

1. Actual damages to be determined by the jury;

2. Punitive damages to be determined by the jury; and

3. Attorney fees.

On the Fifth Claim for Relief:

1. Actual damages to be determined by the jury; and

2. Attorney fees.

On the Sixth Claim for Relief:

1. Actual damages to be determined by the jury;

2. Punitive damages to be determined by the jury; and

3. Attorney fees.

On the Seventh Claim for Relief:

1. Actual damages to be determined by the jury; and

2. Attorney fees.

On the Eighth Claim for Relief:

1. Actual damages to be determined by the jury;

2. Punitive damages to be determined by the jury; and

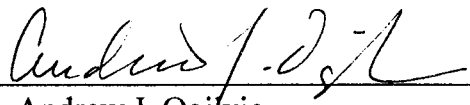
3. Attorney fees.

On all Claims for Relief:

1. Costs and expenses incurred in the action.

Dated: June 16, 2008.

1 KEMNITZER, ANDERSON, BARRON,
2 OGILVIE & BREWER LLP

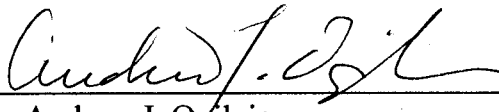
3 By 
4 Andrew J. Ogilvie
5 Attorney for Plaintiff Emelia M. Pasternak

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands a trial by jury on all issues.

8 Dated: June 16, 2008.

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10 KEMNITZER, ANDERSON, BARRON,
11 OGILVIE & BREWER LLP

12 By 
13 Andrew J. Ogilvie
14 Attorney for Plaintiff Emelia M. Pasternak
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